IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5917 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

FIROZ NASARULLA SHEIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5917 of 1990

MRS KETTY A MEHTA for Petitioner No. 1

MR SP SEN & MR MANISH DAGLI, AGPs for Respondent No. 1

MR DD VYAS for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 14/03/2002

ORAL JUDGEMENT

The petitioner challenges the order dated 28.8.1990 (Annexure "C") passed by the Collector, Valsad under the provisions of the Bombay Land Requisition Act, 1948 (hereinafter referred to as "the Act").

2. When this petition was filed in the year 1990, the petitioner herein was holding the post of a Deputy Mamlatdar in the Revenue Department of the State Government and was posted in the Collectorate at Valsad. In the year 1966, when the petitioner was serving in the Valsad Collectorate, the petitioner had informed the Collector that the petitioner was desirous of occupying the premises known as Room No. 3 in "Baug-e-Jetun" Building in Valsad town. In September and October, 1966, the Collector, Valsad sent letters to Mohmad Husein Sema (original owner or the original landlord-father of respondent No. 2 herein) that the provisions of the Act were applicable to the premises in question and that since the premises were lying vacant, the same could not be let out to any one without the permission of the Collector, otherwise the owner would be liable to criminal prosecution. The original owner thereupon agreed to let out the premises to a Government servant. Hence, as per the Collector's order dated 5.11.1966, the petitioner occupied the premises on 8.11.1966.

As against the rent of Rs.50 per month plus taxes demanded by the owner (father of respondent No.2), the petitioner was paying the rent of only Rs.33 per month to the original owner, which was the amount fixed by the Deputy Executive Engineer of the Public Works Department of the State Government. After transfer of the petitioner to another town, the original owner started requesting the Collector for directing the petitioner to return the possession of the premises in question to the owner. Upon the death of the original owner, the premises were inherited by his daughter, present respondent No. 2 Jebunnisha Fakir Mohmad Gebi, one of the ten heirs of the deceased-owner, and she also went on requesting the Collector to direct the petitioner to return the premises to respondent No. 2 as she had a large family and her son was getting married. The Collector by his impugned order dated 28.8.1990 (Annexure "G") cancelled the order dated 5.11.1966 under which the petitioner had obtained the possession of the premises from the original owner. The present petition is, therefore, filed under Articles 226 and 227 of the Constitution for challenging the aforesaid order dated 28.8.1990 at Annexure "G" to the petition.

3. The impugned order is challenged mainly on the ground that all that the Collector had done by the order date 5.11.1966 was granting permission to the landlord under Section 6(3) of the Act to let out the premises to the petitioner, but the Collector, Valsad had never requisitioned the premises under Section 6(4) of the Act

with the result that the Collector has no authority to require the petitioner to hand over possession of the premises to the landlord. It is submitted that a contract of tenancy was entered into between the original landlord and the petitioner and that it was a private contract creating tenancy rights in favour of the petitioner which rights are protected by the Bombay Rent Act. Because the Requisition Act was applicable to the said premies, the landlord could not have let out the said premises without permission of the Collector and, therefore, the Collector had merely permitted the landlord to let out the premises to the petitioner by the aforesaid order dated 5.11.1966, but there was no requisitioning of the premises and, therefore, the Collector had no power or authority to exercise any powers under sub-section (4) of Section 6 or Sections 7 to 11 of the Act.

4. On the other hand, Mr SP Sen and Mr Manish Dagli, learned AGPs for the State of Gujarat/Collector of Valsad and Mr DD Vyas with Mr Utpal Panchal, learned counsel for respondent No. 2 have opposed the petition and submitted that the father of respondent No. 2, the original owner of the premises, had not entered into any contract of tenancy with the petitioner, but in view of the communications from the Collector requiring the original owner to give the premises on rent to a Government servant, the owner had acquiesced into the order of the Collector to permit a Government employee to occupy the premises and that too at the rent determined by the Deputy Executive Engineer of the State Government. It is, therefore, submitted that this was not a case where the owner and the occupant entered into a private agreement creating tenancy rights in favour of the petitioner and merely obtained permission under sub-section (3) of Section 6 of the Act, but it was a case where the Collector and the petitioner had taken initiative to command the original owner, the father of respondent No. 2, to give the premises on rent to the petitioner at the rent which was fixed by the Deputy Executive Engineer and, therefore, the premises were requisitioned, even if there was no formal order requisitioning the premises.

The learned counsel for respondent No. 2 also pointed out from the reply affidavit dated 27.3.1997 that during pendency of this petition, the petitioner has already acquired another premises in Valsad consisting of three rooms and a kitchen as supported by the municipal record.

5. After hearing the learned counsel for the parties for sometime on 11.3.2001, the Court called upon the learned AGPs to call for the original file giving rise to the order dated 5.11.1966 and the other correspondence to throw light on the controversy whether the premises were given by the original owner to the petitioner on account of any requisition from the Collector's office or whether it was a private arrangement between the original owner and the petitioner. The learned AGPS have made the file from the Collector's office available for perusal of the Court and the same has also been shown to Mrs Mehta, learned counsel for the petitioner for inspection.

6. Some of the documents in the file are, of course, already produced either with the petition or with the affidavit in reply of the Collector, Valsad. The Court would like to make a reference to all the relevant documents and events in a chronological order.

6.1 The property in question is room No. 3 of a building called "Baug-e-Jetun", Sema Chawl in Mota Taiwad of Valsad town.

6.2 It appears that some information was given to the Collector's Office that Mohmad Husein Sema, the original owner of the property in question had some vacant premises which he was not ready to let out and, therefore, whenever enquiries were made, he used to reply that the premises were not lying vacant. It, therefore, appears that on enquiry, GS Kazi, who was occupying the aforesaid premises, informed the Collector in writing on 21.9.1966 that in near future he intended to vacate the aforesaid premises and if the Government wished to take over its possession, he (GS Kazi) might be contacted. On 29.9.1996, the Collector, Valsad sent a communication to the owner of the premises Mohmad Haji Museji Sema stating as under (translated) :-

> "This office has received specific information that room No. 3 in Baug-e-Jetun building in Mota Taiwad of Valsad, belonging to you, is lying vacant. In view of the applicability of the Bombay Land Requisition Act to Valsad town, the landlord is required to inform this office about vacant premises within 7 days from the date on which the premises fall vacant and such premises cannot be let out without permission of the Collector, Valsad. Hence, if it is brought to the notice of the Collectorate that you have let out the said property bearing room No. 3 to any

person without permission of this office, legal action will be taken against you as per the provisions of Section 6(5) of the said Act which may be noted. It is requested to send the information within within 7 days from the receipt of this letter as to on which date room No. 3 had fallen vacant."

(emphasis supplied)

(Section 6(5) of the Act provides for prosecution of a landlord letting out his premises without permission of the Collector).

A copy of the said letter was forwarded to GS Kaji, who had by then shifted to Nani Daman with a request to inform the Collectorate as to on which date the aforesaid property had fallen vacant.

On 19.10.1966, the Requisition Inspector from the Collectorate, Valsad recorded the statement of original owner (Mohmad Husein Sema) and two persons in the neighbourhood for finding out when GS Kazi vacated room No. 3 in question. The original owner (Mohmad Husein) informed the Requisition Inspector that Kazi had already shifted to his own property in Nani Daman and he was to vacate room No. 3 within about 8 days and that after getting vacant possession of the property, he (Mohmad Husein) would inform the Collector about the availability of the premises and that he was ready to let out the property to a Government employee.

6.3 It is important to note that in the meantime on 1.10.1966 the petitioner who was a Clerk in the Collectorate, Valsad had requested the Collector, Valsad that he had learnt about room No. 3 in the aforesaid property lying vacant and that the property was lying vacant since 20.9.1966 and that the said room was suitable for the petitioner's family. Hence, permission may be granted for the said room being let out.

6.4 On 24.10.1966, the Collector sent another communication to the petitioner stating as under (translated) :-

"This office has received specific information that room No. 3 in Baug-e-Jetun building in Valsad belonging to you is lying vacant. It has also been found that the statement made by you on 19.10.1966 that the previous tenant Kazi had not handed over possession of the room was false, because possession of the room is with you. If

you let out room No. 3 to any tenant without permission of the Collector, this office will evict the unlawful tenant and legal action will be taken against the landlord under Section 6(5) of the Bombay Land Requisition Act, which may be noted. Hence, this office be informed about the said property lying vacant within one day, failing which this office will take further action which may be noted."

(emphasis supplied)

(Section 6(5) of the Act provides for prosecution, as indicated earlier).

In response to the aforesaid letter, Mohmad Husein, the original owner informed the Collector on the same day i.e. on 24.10.1966 as under (translated) :-

"With respects, this is to inform you that building Baug-e-Jetun in Mota Taiwad in Valsad town is of my ownership. Room No. 3 in the said building is lying vacant and the same may be given on rent to any Government employee."

(emphasis supplied)

6.5 It was in the aforesaid background that the Collector, Valsad issued the order dated 5.11.1966 after making a reference to the application dated 1.10.1966 of the petitioner requesting for making room No. 3 in the aforesaid property available to the petitioner to accommodate his large family and also making a reference to the letter dated 24.10.1966 received from owner Mohmad Husein about room No. 3 lying vacant. The Collector thereupon granted permission for giving the aforesaid room No. 3 on rent to the petitioner. The said order dated 5.11.1966 reads as under (translated) :-

"This office has received information from the landlord that room No. 3 in Baug-e-Jetun building in Mota Taiwad, Valsad, belonging to Mohmad Husein Sema is lying vacant.

Mr FN Sheikh, Clerk in the Mamlatdar office, Pardi has demanded that said room No. 3 be given on rent to him, because he has a large family and the premises in which he is presently residing in Valsad do not have any facilities and he has represented that this will be convenient to him.

In view of the above facts, permission is granted for giving room No. 3 in Baug-e-Jetun building on rent to Mr FN Sheikh.

Sd/- (for Collector)

Copy to Mr Mohmad Husein Sema with a request to handover possession of room No. 3 to Mr Sheikh within one day.

Copy to Mr FN Sheikh, Clerk, Mamlatdar Office, Pardi to take over possession of the room immediately and report compliance."

(emphasis supplied)

In view of the above communications, the original owner (father of respondent No. 2) permitted the petitioner to occupy the room in question and the petitioner submitted the report dated 8.11.1966 informing the Collector that the petitioner had taken over possession of the premises in question on that day.

6.6 The original owner demanded from the petitioner the rent of Rs.50/- per month plus taxes. The petitioner refused to pay such amount of rent and requested the Collector to get the rent of the premises fixed. The Deputy Engineer in the State Government, Valsad submitted certificates dated 28.12.1966 and 7.1.1967 fixing the rent at Rs.33 per month for the period from 5.11.1966 to 31.3.1967. The Collector accordingly forwarded the said rent certificates to the petitioner alongwith the letter dated 24.2.1967 and also forwarded a copy of the same to original owner Mohmad Husein Sema requiring him to recover the rent as per the said certificates of the Deputy Engineer. The petitioner also sent letter dated 23.3.1967 to the original owner stating that he (the owner) was demanding rent at the rate of Rs.50 per month plus taxes, but the Deputy Engineer had fixed the rent at Rs.33 only and, therefore, the petitioner would pay monthly rent of Rs.33 plus taxes to the tune of Rs.3.75 i.e. Rs.36.75 in aggregate. The petitioner also addressed the letter dated 30.3.1967 to the Collector informing him that the petitioner had sent rent at the rate of Rs.33 plus tax of Rs.3.75 per month, but the owner was not accepting the money order. Hence, the Collector by his letter dated 20.4.1967 called upon the owner to accept the rent at the rate of Rs.33 per month as fixed by the Deputy Engineer and to accept the rent

being remitted by the tenant i.e. the petitioner herein.

6.7 Thereafter on 4.2.1976, original owner Mohmad Husein requested the Collector that the petitioner was transferred from Valsad to Dharampur and, therefore, the petitioner should be required to vacate room No. 3 let out to him and that the arrears of rent which the petitioner had not paid should be ordered to be deducted from the petitioner's salary and remitted to the owner. By his letter dated 7.2.1976, the Collector called upon the petitioner to pay the arrears of rent to the owner. Thereafter on 11.4.1985, present respondent No. 2 (daughter of the original owner) informed the Collector that during his life time, her father Mohmad Husein had partitioned the properties and room No. 3 of Baug-e-Jetun building was given to respondent No. 2 as her share. The said room had been given to the petitioner on account of the requisition made by the Collector as per the order dated 5.11.1966. Respondent No. 2 required the room for occupation of her family. Therefore, the Collector was requested to call upon the petitioner to handover possession of the room to respondent No. 2. Thereafter also respondent No. 2 requested the Collector on 13.1.1986 to call upon the petitioner to handover possession of the premises to respondent No. 2 by derequisitioning the premises. By reply dated 29.3.1986, the Collector, Valsad informed respondent No. 2 that the period of requisition was extended till 31.3.1987 and, therefore, the property cannot be derequisitioned. The file also discloses that on 6.1.1988 the Mamlatdar, Valsad informed the Collector that when the petitioner was called upon to handover possession of room No. 3 to respondent No. 2, the petitioner had given a reply stating that the period of requisition was extended by the Government till 31.7.1990 and that the petitioner was discharging duties as Deputy Mamlatdar in the Collectorate, Valsad. Respondent No. 2, however, persisted that the other premises which were requisitioned alongwith room No. 3 were already derequisitioned, but still the petitioner who went on giving oral promises for returning the premises to respondent No. 2 did not handover possession of the premises which fact was causing a lot of hardship to respondent No. 2 and her family as her son had married and the room in question was required for occupation by the family. Respondent No. 2 went on pleading her entreaties and ultimately by the impugned order dated 28.8.1990 (Annexure "G"), the Collector cancelled the order dated 5.11.1966. It is against the said order that the present petition is filed.

7. The principal contention raised in this petition is that the premises in question were not requisitioned under sub-section (4) of Section 6 of the Act, but only permission was granted by the Collector under sub-section (3) of Section 6 and, therefore, by a private contract tenancy rights were created by original owner Mohmad Husein in favour of the petitioner.

8. In response to the notice and Rule issued by this Court, affidavit in reply dated 5.5.2001 has been filed by the Collector, Valsad and affidavit in reply dated 17.12.1991 and another affidavit dated 27.3.1997 are filed by respondent No. 2. It is stated in the affidavit of the Collector that the order has been passed using and exercising authority and power vested with the Collector and, therefore, the said house can be considered as a requisitioned house. It is also stated that the petitioner was allotted the premises in question on rent in view of the provisions of the Bombay Land Requisition Act, 1948 and, therefore, the provisions of the Bombay Rent Act would not be applicable to the facts of the present case. The Collector has also produced the letter dated 24.10.1966 from his office to the original owner, the owner's reply dated 24.10.1966 and the other communications of 1990.

9. The stand of the present owner (daughter of the original owner) respondent No. 2 in the reply affidavit is that the premises in question were not let out to the petitioner as a tenant under any private agreement, but it was pursuant to the requisition made by the Collector and allotment in favour of the petitioner that the petitioner was permitted to occupy the premises. Respondent No. 2 has also denied that there was any relationship of landlord and tenant between the petitioner and respondent No. 2. In the affidavit dated 27.3.1997, respondent No. 2 has also pointed out that her elder son got married and her younger son was also to get married and that, therefore, the premises in question were badly required by her family. She also pointed out that the petitioner has got his own accommodation in his wife's name in Roshan "A" Apartments, Kosamba Road, Mustaqnagar, Valsad and that the said premises consist of 3 rooms and a kitchen. The petitioner's family consists of 4 persons only and the other daughters of the petitioner are married and residing at their in laws' place. Hence, the premises in question consisting of only one room are not required by the petitioner. Respondent No. 2 has also produced alongwith the said affidavit a copy of the property card showing that in the year 1995-96 the petitioner had premises consisting of 3

rooms and a kitchen admeasuring 900 sq.ft.

10. At the further hearing of this petition, Mrs Ketty A Mehta, learned counsel for the petitioner has submitted that the premises in question were never requisitioned. If the premises had been requisitioned, the Collector would have issued an order of requisition as per the format which is at Annexure "B" to the petition, which (translated) reads as under :-

"Upon enquiry under Section 6(1) of the Bombay Rent Act, 1948, it is found that after coming into force of the said Act, the premises described in the schedule hereto have fallen vacant. Hence, by virtue of the powers conferred on me under clause (a) of sub-section (4) of Section 6 of the said Act, I, _____, Collector, Valsad hereby requisition the said building for the public purpose of letting the same out to a Government Office/employee.

Schedule

Owner of the building : _____
Property Details : _____"

It is contended that since such a requisition order was neither issued nor produced by the respondents, it is clear that the premises in question were never requisitioned under sub-section (4) of Section 6 of the Act and all that the Collector had done by order dated 5.11.1966 was to grant permission under sub-section (3) of Section 6 to the landlord to let out the premises to the petitioner. Any premises which were covered by the Bombay Land Requisition Act, 1948 could not have been let out to any person without permission of the Collector and, therefore, the permission under sub-section (3) of Section 6 merely lifted the statutory embargo, but the transaction in question was essentially a private lease under which the petitioner became a tenant and acquired all the rights as a tenant under the Bombay Rent Act. No rent was fixed by the Collector. The rent was not being recovered by the Collector and the landlord was not being paid compensation by the Collector, but the petitioner was paying rent directly to the landlord and, therefore, there was a contract of private tenancy created in favour of the petitioner which was protected under the provisions of the Bombay Rent Act. It is, therefore, submitted that the petitioner cannot be evicted from the premises in question unless respondent No. 2-landlady

obtains a decree of eviction from the competent Court under the Bombay Rent Act.

It is further submitted that in any view of the matter, the Collector cannot ask the occupant i.e. the petitioner to return the premises to the landlord or respondent No.2, but the premises can be ordered to be returned only to the Government.

Lastly, it is submitted that since the landlord has not terminated the tenancy, there is no ground whatsoever for the Collector to send any notice to the petitioner.

11. The Bombay Land Requisition Act, 1948 ("the Act" for short) was enacted to provide for the requisition of land, for the continuance of requisition of land and for certain other purposes. Section 4 of the Act gives the definition of the relevant expressions as under :-

"4. In this Act, unless there is anything repugnant to the subject or context -

(1) "land" includes benefits to arise out of land, and buildings and all things attached to the earth or permanently fastened to the buildings or things attached to the earth;

(2) "landlord" means any person who is, for the time being, receiving or entitled to receive, rent in respect of any premises whether on his own account on account, or on behalf, or for the benefit, or any other person, or as a trustee, guardian, or receiver for any other person or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant; and includes any person, not being a tenant, who from time to time derives title under a landlord; and further includes in respect of his sub-tenant a tenant who has sublet any premises;

(3) "premises" means any building or part of a building let or intended to be let separately including -

(i) the garden, grounds, garages and out-houses, if any, appurtenant to such building or part of a building;

(ii) any fittings affixed to such building or

part of a building for the more beneficial enjoyment thereof, but does not include a room or other accommodation in a hotel or lodging house;

(4) "prescribed" means prescribed by rules made under this Act;

(5) "to requisition" means in relation to any land to take possession of the land or to require the land to be placed at the disposal of the State Government."

Section 6 is relevant for the purpose of the present controversy. The same reads as under :-

"6.(1) If any premises situate in an area specified by the State government by notification in the Official Gazette, are vacant on date of such notification and wherever any such premises are vacant or become vacant after such date by reason of the landlord, the tenant or the sub-tenant, as the case may be, ceasing to occupy the premises or by reason of the release of the premises from requisition or by reason of the premises being newly erected or reconstructed or for any other reason the landlord of such premises shall given intimation thereof in the prescribed form to an officer authorized in this behalf by the State Government.

(2) The intimation shall be given by registered post within one month of the date of the notification in the case of premises which are vacant on such date and in other cases within seven days of the premises becoming vacant or becoming available for occupation.

(3) A landlord shall not, without the permission of the State Government let occupy, or permit to be occupied such premises before giving the intimation and for a period of one month from the date on which the intimation is received.

(4) Whether or not an intimation under sub-section (1) is given and notwithstanding anything contained in section 5, the State Government may by order in writing -

(a) requisition the premises for any public

purpose and may use or deal with the premises for any such purpose in such manner as may appear to it to be expedient; or

Provided that where an order is to be made under clause (a) requisitioning the premises in respect of which no intimation is given by the landlord the State Government shall make such inquiry as it deems fit and make a declaration in the order that the premises were vacant or had become vacant, on or after the date referred to in sub-section (1) and such declaration shall be conclusive evidence that the premises were or had so become vacant.

(5) And landlord who fails to give such intimation within the period specified in sub-section (2) shall, on conviction, be punishable with imprisonment for a term which may extend to three months or with fine or with both and any landlord who lets, occupies or permits to be occupied the premises in contravention of the provisions of sub-section (3), shall, on conviction, be punished with imprisonment for a term which may extend to one year and shall also be punished with fine."

Explanation to Section 6 is not relevant for the purpose of the present controversy. Section 7 provides for continuance of requisition. Section 8 provides for payment of compensation to persons having interest in the land which was requisitioned, the amount of which shall be determined by an officer authorized in this behalf by the State Government. Section 8B empoweres the Government to direct the allottee of the land or the person who is in occupation of the land to vacate the same within such period as may be specified in the order and to deliver possession thereof to the officer authorized by the State Government. Section 9(1) provides that the State Government may at any time release from requisition any land requisitioned or continued to be subject to requisition under the Act. Sub-section (1A) provides that notwithstanding anything contained in sub-section (1), the State Government shall release from requisition any land requisitioned or continued to be subject to requisition under the Act before the commencement of the Bombay Land Requisition (Gujarat Amendment) Act, 1980 on or before the expiry of period of 13 years from such commencement.

In other words, the State Government was bound to release from requisition the premises in question in the year 1993 upon completion of 13 years from the commencement of the aforesaid Amendment Act of 1980. This time limit of 13 years was prescribed by Gujarat Act No. 6 of 1980 read with Gujarat Act No. 17 of 1991.

Sub-section (3) of Section 9 provides that when any land is to be released from requisition, the State Government may specify by order in writing the person to whom possession of the land shall be given. Sub-section (4) of Section 9 provides that the delivery of possession of the land to the person specified in such order shall be a full discharge of the State Government from all liability in respect of such delivery.

12. The first ground which arises for consideration is what was the nature of the transaction under which the petitioner obtained possession of the premises in question in November, 1966. Was it a mere private agreement between the original owner i.e. Mohmad Husein and the petitioner with the permission of the Collector under Section 6(3) of the Act or whether the petitioner occupied the premises in pursuance of the allotment of premises by the Collector in favour of the petitioner under sub-section (4) of Section 6 of the Act.

It is true that neither of the respondents has produced any formal order under sub-section (4) of Section 6 of the Act as per the format which is produced at Annexure "B" to the petition. At the same time, no statutory provision is pointed out under which such a format is prescribed. A bare perusal of the correspondence reproduced in para 6 hereinabove and the office notings in the concerned file which has been produced for perusal of the Court, (inspection of which was also offered to the learned counsel for the petitioner), clearly indicates that it was the Collectorate which had started writing to Mohmad Husein, the original owner, to inform the Collectorate whether his premises were lying vacant and to inform the Collectorate as soon as the premises in question fell vacant. It is clear from the petitioner's letter dated 1.10.1966 that it was the petitioner himself, a Clerk in the Collectorate at Valsad, who was interested in getting possession of the premises in question for accommodating his family because he wanted to reside in that particular locality. The statement dated 19.10.1966 of the owner before the Requisition Inspector, the strongly worded letters dated 29.9.1966 (para 6.2) and 24.10.1966 (para 6.4) from the Collector to the owner and the owner's

reply dated 24.10.1966 (para 6.4) on the same day to the effect that the room in question was lying vacant and it could be given to any Government employee on rent clearly indicate that original owner Mohmad Husein had not voluntarily intended to give the premises in question to the petitioner, but it was on account of the persistent pressure from the Collectorate that the original owner agreed that the premises may be given on rent to any Government employee. The further fact that the owner demanded rent of Rs. 50 per month plus taxes from the petitioner but the petitioner did not pay the said rent nor did the petitioner approach the Court under the Bombay Rent Act for fixation of standard rent, but the petitioner requested the Collector to get the appropriate rent fixed and the Collector got it fixed by the Deputy Engineer of the State Government, at Rs.33 per month and the petitioner went on paying such rent clearly indicate that it was not pursuant to any private tenancy agreement between Mohmad Husein and the petitioner that the petitioner got the possession of the premises in question. Merely because a formal order under sub-section (4) of Section 6 is not brought on record, or is not to be found in the file, it does not mean that the premises in question were not requisitioned by the Collector. To all intents and purposes, the Collector, Valsad had requisitioned the premises in question for allotting the same to the petitioner as the petitioner was interested in getting the said premises for occupation by his family in that particular locality as is clear from the petitioner's letter dated 1.10.1966 to the Collector. It is, therefore, clear that the premises in question were requisitioned by the Collector and owner Mohmad Husein did not create any tenancy rights in favour of the petitioner. In this view of the matter, the Collector did have the power to derequisition the premises and require the petitioner to handover the premises in question to the present owner, that is, to respondent No. 2. In other words, in view of the fact that the operation of Bombay Land Requisition Act, 1948 had already come to an end with effect from 31.7.1993, the petitioner who had obtained the possession of the premises in question on the strength of the requisition as aforesaid, has no right to continue to occupy the premises.

13. Section 4 of the Bombay Rents, Hotels and Lodging House Rates Control Act, 1947 (hereinafter referred to as "the Bombay Rent Act") reads as under :-

"4.(1) This Act shall not apply to any premises belonging to the Government or a local authority

or apply as against the Government to any tenancy or other like relationship created by grant from the Government in respect of premises taken on lease or requisitioned by the Government; but it shall apply in respect of premises let to the Government or a local authority."

The aforesaid provisions of the Bombay Rent Act, therefore, make it clear that the Rent Act does not apply to the premises requisitioned by the Government. In this view of the matter and in view of the aforesaid finding that the premises in question were requisitioned by the Collector, Valsad under the provisions of the Requisition Act, it is obvious that the provisions of the Bombay Rent Act are not applicable to the premises in question. Therefore, the case pleaded by the petitioner about creation of tenancy under the Bombay Rent Act is not tenable.

14. As regards the contention that the Collector can only ask the occupant to return the premises to the Government and not to the landlord, the contention is misconceived because this is not a case where the Collector intended to take back possession of the premises from the petitioner and allot the same to another Government employee. The Collector intended to derequisition the premises and to handover possession to the owner - respondent No.2. Hence, the Collector rightly passed the order dated 6.7.1990 requiring the petitioner to handover possession of the premises to respondent No. 2. Sub-section (3) of Section 9 of the Act also provided as under :-

"When any land is to be released from requisition, the State Govt. may specify in writing the person to whom possession of the land shall be given. Section 4(1) defines "land" as including buildings."

15. As regards the contention about non-termination of tenancy, in view of the aforesaid finding that no tenancy was created by owner Mohmad Husein or by respondent No. 2 in favour of the petitioner, the question of termination of any tenancy cannot arise.

16. The above discussion makes it crystal clear that the petitioner has no case either in law or in equity. Even assuming that the petitioner had any case in law, he has none in equity. As per the settled legal position, the discretionary writ jurisdiction is not to be exercised merely on the ground of a mere error of law, if

it is not accompanied by a failure of justice (vide A.M. Allison vs. B.L. Sen, AIR 1957 SC 226). Recently also, the Apex Court has laid down the following principles in the same vein in Roshan Deen vs. Preeti Lal, 2002 (1) SCC 100 :-

"We are greatly disturbed by the insensitivity reflected in the impugned judgment rendered by the learned Single Judge in a case where judicial mind would be tempted to utilize all possible legal measures to impart justice to a man mutilated so outrageously by his cruel destiny. The High Court non-suited him in exercise of a supervisory and extraordinary jurisdiction envisaged under Article 227 of the Constitution. Time and again this Court has reminded that the power conferred on the High Court under Articles 226 and 227 of the Constitution is to advance justice and not to thwart it (vide State of U.P v. District Judge, Unnao, AIR 1984 SC 1401). The very purpose of such constitutional powers being conferred on the High Courts is that no main should be subjected to injustice by violating the law. The lookout of the High Court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the by-product of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting the error of law."

17. In view of the above discussion, it is obvious that there is no merit in any of the contentions urged on behalf of the petitioner.

18. In view of the fact that the petitioner had already obtained possession of another premises in the same town consisting of 3 rooms and a kitchen which are available with the petitioner atleast from 1995-96 onwards, and still the petitioner has not handed over the premises in question to respondent No. 2, (which premises the petitioner had obtained on the strength of the requisition made by the Collector, Valsad in 1966), it would be just and proper to direct the petitioner to pay respondent No. 2 costs of this petition which are quantified at Rs. 10,000/-(Rupees Ten thousand only).

O R D E R

19. In view of the above discussion, the petition fails and is hereby dismissed with costs quantified at Rs.10,000/- (Rupees Ten thousand only) which the petitioner shall pay respondent No. 2. The petitioner shall hand over vacant and peaceful possession of the premises being Room No. 3 in "Baug-e-Jetun" Building in Mota Taiwad, Valsad to respondent No.2-Jebunnisha Fakir Mohmad Gebi by 30th April, 2002. The aforesaid costs shall be paid by the petitioner to respondent No. 2 by 30th April, 2002. The petitioner shall also pay respondent No. 2 Rs.1,000/- (Rupees One thousand only) as mesne profits for every month during which the petitioner does not hand over possession of the premises to respondent No. 2 beginning with the month of May, 2002. If the petitioner does not pay the aforesaid amounts, the Collector, Valsad shall recover the same from the salary or retiral benefits payable to the petitioner and pay over the same to respondent No. 2 as expeditiously as possible, and in any case within one month from the date/s on which the amount/s fall due.

Rule is discharged. Interim relief granted earlier is vacated.

20. At this stage, learned counsel for the petitioner requests that the interim relief which has been operating so far may be continued for some time to enable the petitioner to have further recourse in accordance with law.

In the facts and circumstances of the case and more particularly, when the petitioner is granted time to comply with the direction, the request is rejected.

(M.S. Shah, J.)
sundar/-